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VIA ECF

April 15, 2011

Hon. Kiyo A. Matsumoto
United States District Judge
United States Courthouse
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Sandra Barkley v. United Homes, LLC, et al.*, CV-04-0875 (KAM)(RLM)
Mary Lodge v. United Homes, LLC, et al., CV-05-0187 (KAM)(RLM)
R. & S. Gibbons v. United Homes, LLC, et al., CV-05-5302 (KAM)(RLM)
Dewitt Mathis v. United Homes, LLC, et al., CV-05-4386 (KAM)(RLM)
Miles and Lisa McDale v. United Homes, LLC, et al., CV-05-5362 (KAM)(RLM)
Charlene Washington v. United Homes, LLC, et al., CV-05-5679 (KAM)(RLM)

Dear Judge Matsumoto:

This office, along with AARP Foundation Litigation and Cowan Liebowitz & Latman, P.C., represents the plaintiffs in the above-referenced consolidated actions. Pursuant the Court's instruction during the final pretrial conference in these actions on April 11, 2011, we write to inform the Court of the parties' efforts to reach agreement regarding remaining evidentiary disputes. Some progress was made this week in our efforts to resolve differences with the United Homes Defendants and Yaron Hershco, and we have narrowed the scope of our disputes with the Bayview defendants. We have no outstanding disputes with Olympia Mortgage Corporation, but we have been unable to reach counsel for Olympia today to confirm whether Olympia will consent to certain modifications to pretrial documents arising out of our discussions with counsel for the other defendants.

Exhibit Designations

Plaintiffs' objections to the exhibit designations of the United Homes Defendants and Yaron Hershco have been resolved by the Court's ruling on plaintiffs' motions *in limine*, and by

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Towards justice and dignity for all – Por la Justicia y Dignidad de Todos



Hon. Kiyo A. Matsumoto

April 15, 2011

Page 2

these defendants' inclusion in their exhibit binders of documents that had not previously been provided or identified by Bates number. An updated chart of the United Homes Defendants' and Mr. Hershco's exhibit designations is attached hereto as Appendix A.

Plaintiffs' objections to the exhibit designations of the Bayview defendants have been eliminated by the Bayview defendants' agreement to withdraw their designations of the objected-to designations. An updated chart of the Bayview defendants' exhibit designations is attached hereto as Appendix B.

Counsel for United Homes defendants and Yaron Hershco has indicated that they wish to defer discussions regarding their objections to certain exhibits designated by the plaintiffs until they receive copies of plaintiffs' designated exhibits, which are being delivered to them this afternoon. Attached as Appendix C hereto is a chart reflecting the remaining objections to the plaintiffs' exhibit designations. (In light of the length of plaintiffs' list of designated exhibits, we have not included the entire chart.)

Deposition Transcript Designations

We have conferred with counsel for the United Homes Defendants and Yaron Hershco regarding these defendants' objections to the plaintiffs' designations of portions of the deposition of defendant Benjamin Turner and of the entire deposition of defendant Yaron Hershco. These defendants have agreed to withdraw all of their objections to the designated testimony of Mr. Turner. As to the deposition testimony of Mr. Hershco, plaintiffs do not agree to withdraw the objected-to portions. The amended chart of plaintiffs' deposition designations is attached hereto as Exhibit D.

Counsel for plaintiffs have conferred with counsel for the Bayview defendants regarding plaintiffs' objections to designated portions of the deposition of plaintiff Mary Lodge. Plaintiffs agreed to withdraw certain objections after the Bayview defendants agreed to certain changes to the designated ranges. However, plaintiffs maintain their objections to the designated portions of the deposition referring to Mrs. Lodge's interest in a property at 102 Decatur Street prior to her purchase of her home at 249 Halsey Street, on the grounds that such testimony is not probative of any defense or claim, and is both confusing and potentially prejudicial. An updated chart of the Bayview defendants' deposition designations is attached hereto as Appendix E.

Stipulations

Counsel for plaintiffs have proposed that the parties stipulate to various facts; see Appendix F attached hereto. Counsel for Bayview defendants has agreed to stipulate to the facts solely to the extent that the facts pertain to the *Lodge* action. Counsel for the United Homes Defendants and Mr. Hershco have indicated that they will not stipulate "at this time" as to the authenticity of documents or signatures, and that they will not stipulate that all plaintiffs are African-American. We have not heard from counsel for Olympia regarding the proposed stipulations.

Proposed Jury Instructions

With respect to the proposed jury instructions submitted by plaintiffs, counsel for the United Homes Defendants and Yaron Hershco object to Instruction No. 17 and Instruction No.

Hon. Kiyo A. Matsumoto

April 15, 2011

Page 3

18, regarding piercing the corporate veil. No other defendant has articulated any objection to plaintiffs' proposed instructions.

Counsel for plaintiffs have conferred with counsel for the United Homes Defendants and Yaron Hershco regarding the proposed jury instructions submitted by these defendants. Two days following these discussions, counsel for United Homes Defendants and Yaron Hershco provided us with a copy of their proposed amended jury instructions, just minutes before filing same on ECF. The amended proposed instructions address some but not all of plaintiffs' objections to the prior version, and we continue to object to each and every remaining instruction regarding substantive law governing the claims and defenses in these actions.

Counsel for plaintiffs have informed the counsel for the Bayview defendants that they object to the Bayview defendants' jury instruction in their entirety.

Proposed Verdict Forms

Counsel for plaintiffs have conferred with counsel for the United Homes Defendants and Yaron Hershco regarding the plaintiffs' proposed verdict forms. As a result of these discussions, plaintiffs agreed to modify the forms slightly. Counsel for the United Homes Defendants and Yaron Hershco continue to object to the question on each verdict form relating to piercing the corporate veil. Counsel for the Bayview defendants has agreed to plaintiffs' amended forms. We have been unable to communicate with Olympia regarding the changes to the forms. The modified forms are attached hereto as Appendix G and will be submitted to the Court on a disc in Word format.

Plaintiffs are available to discuss these matters should Your Honor so require.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sara Manaugh', with a stylized, flowing script.

Sara Manaugh

(Attachments)